

UTILITIES CODE  
TITLE 2. PUBLIC UTILITY REGULATORY ACT  
SUBTITLE B. ELECTRIC UTILITIES  
CHAPTER 38. REGULATION OF ELECTRIC SERVICES

SUBCHAPTER A. STANDARDS

Sec. 38.001. GENERAL STANDARD. An electric utility and an electric cooperative shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 34, eff. Sept. 1, 1999.

Sec. 38.002. AUTHORITY OF REGULATORY AUTHORITY CONCERNING STANDARDS. A regulatory authority, on its own motion or on complaint and after reasonable notice and hearing, may:

(1) adopt just and reasonable standards, classifications, rules, or practices an electric utility must follow in furnishing a service;

(2) adopt adequate and reasonable standards for measuring a condition, including quantity, quality, pressure, and initial voltage, relating to the furnishing of a service;

(3) adopt reasonable rules for examining, testing, and measuring a service; and

(4) adopt or approve reasonable rules, specifications, and standards to ensure the accuracy of equipment, including meters and instruments, used to measure a service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.003. RULE OR STANDARD. (a) An electric utility may not impose a rule except as provided by this title.

(b) An electric utility may file with the regulatory authority a standard, classification, rule, or practice the utility follows.

(c) The standard, classification, rule, or practice continues in force until:

(1) amended by the utility; or

(2) changed by the regulatory authority as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.004. MINIMUM CLEARANCE STANDARD. (a) Notwithstanding any other law, a transmission or distribution line owned by an electric utility or an electric cooperative must be constructed, operated, and maintained, as to clearances, in the manner described by the National Electrical Safety Code Standard ANSI (c)(2), as adopted by the American National Safety Institute and in effect at the time of construction.

(b) An electric utility, municipally owned utility, or electric cooperative shall meet the minimum clearance requirements specified in Rule 232 of the National Electrical Safety Code Standard ANSI (c)(2) in the construction of any transmission or distribution line over the following lakes:

- (1) Abilene;
- (2) Alan Henry;
- (3) Alvarado Park;
- (4) Amistad;
- (5) Amon G. Carter;
- (6) Aquilla;
- (7) Arlington;
- (8) Arrowhead;
- (9) Athens;
- (10) Austin;
- (11) Averhoff;
- (12) B. A. Steinhagen;
- (13) Bachman;
- (14) Balmorhea;
- (15) Bardwell;
- (16) Bastrop;
- (17) Baylor Creek;
- (18) Belton;
- (19) Benbrook;
- (20) Big Creek;
- (21) Bob Sandlin;

- (22) Bonham;
- (23) Bonham State Park;
- (24) Brady Creek;
- (25) Brandy Branch;
- (26) Braunig;
- (27) Brazos;
- (28) Bridgeport;
- (29) Brownwood;
- (30) Bryan;
- (31) Bryson;
- (32) Buchanan;
- (33) Buffalo Creek;
- (34) Buffalo Springs;
- (35) Caddo;
- (36) Calaveras;
- (37) Canyon;
- (38) Casa Blanca;
- (39) Cedar Creek;
- (40) Champion Creek;
- (41) Choke Canyon;
- (42) Cisco;
- (43) Cleburne State Park;
- (44) Clyde;
- (45) Coffee Mill;
- (46) Coleman;
- (47) Coletto Creek;
- (48) Colorado City;
- (49) Conroe;
- (50) Cooper;
- (51) Corpus Christi;
- (52) Crook;
- (53) Cypress Springs;
- (54) Daniel;
- (55) Davy Crockett;
- (56) Diversion;
- (57) Dunlap;
- (58) Eagle Mountain;

- (59) E. V. Spence;
- (60) Fairfield;
- (61) Falcon;
- (62) Fayette County;
- (63) Findley;
- (64) Fork;
- (65) Fort Parker State Park;
- (66) Fort Phantom Hill;
- (67) Fryer;
- (68) Georgetown;
- (69) Gibbons Creek;
- (70) Gilmer;
- (71) Gladewater;
- (72) Gonzales;
- (73) Graham;
- (74) Granbury;
- (75) Granger;
- (76) Grapevine;
- (77) Greenbelt;
- (78) Halbert;
- (79) Hawkins;
- (80) Holbrook;
- (81) Hords Creek;
- (82) Houston;
- (83) Houston County;
- (84) Hubbard Creek;
- (85) Inks;
- (86) Jacksboro;
- (87) Jacksonville;
- (88) J. B. Thomas;
- (89) Joe Pool;
- (90) Kemp;
- (91) Kickapoo;
- (92) Kirby;
- (93) Kurth;
- (94) Lady Bird;
- (95) Lake O' The Pines;

- (96) Lavon;
- (97) Leon;
- (98) Lewisville;
- (99) Limestone;
- (100) Livingston;
- (101) Lone Star;
- (102) Lost Creek;
- (103) Lyndon B. Johnson;
- (104) Mackenzie;
- (105) Marble Falls;
- (106) Marine Creek;
- (107) Martin Creek;
- (108) McClellan;
- (109) Medina;
- (110) Meredith;
- (111) Meridian State Park;
- (112) Mexia;
- (113) Mill Creek;
- (114) Millers Creek;
- (115) Mineral Wells;
- (116) Monticello;
- (117) Moss;
- (118) Mountain Creek;
- (119) Muenster;
- (120) Murvaul;
- (121) Nacogdoches;
- (122) Naconiche;
- (123) Nasworthy;
- (124) Navarro Mills;
- (125) New Ballinger;
- (126) Nocona;
- (127) Oak Creek;
- (128) O. C. Fisher;
- (129) O. H. Ivie;
- (130) Palestine;
- (131) Palo Duro;
- (132) Palo Pinto;

(133) Pat Cleburne;  
(134) Pat Mayse;  
(135) Pinkston;  
(136) Placid;  
(137) Possum Kingdom;  
(138) Proctor;  
(139) Purtis Creek;  
(140) Quitman;  
(141) Raven;  
(142) Ray Hubbard;  
(143) Ray Roberts;  
(144) Red Bluff;  
(145) Richland-Chambers;  
(146) Sam Rayburn;  
(147) Sheldon;  
(148) Somerville;  
(149) Squaw Creek;  
(150) Stamford;  
(151) Stillhouse Hollow;  
(152) Striker;  
(153) Sulphur Springs;  
(154) Sweetwater;  
(155) Tawakoni;  
(156) Texana;  
(157) Texoma;  
(158) Timpson;  
(159) Toledo Bend;  
(160) Tradinghouse Creek;  
(161) Travis;  
(162) Twin Buttes;  
(163) Tyler;  
(164) Waco;  
(165) Walter E. Long;  
(166) Waxahachie;  
(167) Weatherford;  
(168) Welsh;  
(169) Wheeler Branch;

- (170) White River;
- (171) White Rock;
- (172) Whitney;
- (173) Wichita;
- (174) Winnsboro;
- (175) Winters-Elm Creek;
- (176) Wood;
- (177) Worth; and
- (178) Wright Patman.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 35, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1320 (H.B. [4150](#)), Sec. 4, eff. September 1, 2019.

Sec. 38.005. ELECTRIC SERVICE RELIABILITY MEASURES. (a) The commission shall implement service quality and reliability standards relating to the delivery of electricity to retail customers by electric utilities and transmission and distribution utilities. The commission by rule shall develop reliability standards, including:

- (1) the system-average interruption frequency index (SAIFI);
- (2) the system-average interruption duration index (SAIDI);
- (3) achievement of average response time for customer service requests or inquiries; or
- (4) other standards that the commission finds reasonable and appropriate.

(b) The commission may take appropriate enforcement action under this section, including action against a utility, if any of the utility's feeders with 10 or more customers has had a SAIDI or SAIFI average that is more than 300 percent greater than the system average of all feeders during any two-year period, beginning in the year 2000. In determining the appropriate enforcement action, the commission shall consider:

- (1) the feeder's operating and maintenance history;

(2) the cause of each interruption in the feeder's service;

(3) any action taken by a utility to address the feeder's performance;

(4) the estimated cost and benefit of remediating a feeder's performance; and

(5) any other relevant factor as determined by the commission.

(c) The standards implemented under Subsection (a) shall require each electric utility and transmission and distribution utility subject to this section to maintain adequately trained and experienced personnel throughout the utility's service area so that the utility is able to fully and adequately comply with the appropriate service quality and reliability standards.

(d) The standards shall ensure that electric utilities do not neglect any local neighborhood or geographic area, including rural areas, communities of less than 1,000 persons, and low-income areas, with regard to system reliability.

(e) The commission may require each electric utility and transmission and distribution utility to supply data to assist the commission in developing the reliability standards.

(f) Each electric utility, transmission and distribution utility, electric cooperative, municipally owned utility, and generation provider shall be obligated to comply with any operational criteria duly established by the independent organization as defined by Section [39.151](#) or adopted by the commission.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 36, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 424 (H.B. [2052](#)), Sec. 1, eff. June 19, 2009.

#### SUBCHAPTER B. PROHIBITIONS ON PREFERENCES AND DISCRIMINATION

Sec. 38.021. UNREASONABLE PREFERENCE OR PREJUDICE CONCERNING SERVICE PROHIBITED. In providing a service to persons in a classification, an electric utility may not:



(1) grant an unreasonable preference or advantage to a person in the classification; or

(2) subject a person in the classification to an unreasonable prejudice or disadvantage.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.022. DISCRIMINATION AND RESTRICTION ON COMPETITION. An electric utility may not:

(1) discriminate against a person or electric cooperative who sells or leases equipment or performs services in competition with the electric utility; or

(2) engage in a practice that tends to restrict or impair that competition.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 37, eff. Sept. 1, 1999.

#### SUBCHAPTER C. EXAMINATIONS, TESTS, AND INSPECTIONS

Sec. 38.051. EXAMINATION AND TEST OF INSTRUMENT OR EQUIPMENT; INSPECTION. (a) A regulatory authority may:

(1) examine and test equipment, including meters and instruments, used to measure service of an electric utility; and

(2) set up and use on the premises occupied by an electric utility an apparatus or appliance necessary for the examination or test.

(b) The electric utility is entitled to be represented at an examination, test, or inspection made under this section.

(c) The electric utility and its officers and employees shall facilitate the examination, test, or inspection by giving reasonable aid to the regulatory authority and to any person designated by the regulatory authority for the performance of those duties.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.052. INSPECTION FOR CONSUMER. (a) A consumer may have a meter or other measuring device tested by an electric utility:

(1) once without charge, after a reasonable period of presumed accuracy the regulatory authority establishes by rule; and

(2) at a shorter interval on payment of a reasonable fee established by the regulatory authority.

(b) The regulatory authority shall establish reasonable fees to be paid for other examining or testing of a measuring device on the request of a consumer.

(c) If the consumer requests the test under Subsection (a)(2) and the measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer, the fee the consumer paid at the time of the request shall be refunded.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

#### SUBCHAPTER D. IMPROVEMENTS IN SERVICE

Sec. 38.071. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. The commission, after notice and hearing, may:

(1) order an electric utility to provide specified improvements in its service in a specified area if:

(A) service in the area is inadequate or substantially inferior to service in a comparable area; and

(B) requiring the company to provide the improved service is reasonable; or

(2) order two or more electric utilities or electric cooperatives to establish specified facilities for interconnecting service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 38, eff. Sept. 1, 1999.

Sec. 38.072. PRIORITIES FOR POWER RESTORATION TO CERTAIN MEDICAL FACILITIES. (a) In this section:

(1) "Assisted living facility" has the meaning assigned by Section [247.002](#), Health and Safety Code.

(2) "Extended power outage" has the meaning assigned by Section [13.1395](#), Water Code.

(3) "Hospice services" has the meaning assigned by

Section 142.001, Health and Safety Code.

(4) "Nursing facility" has the meaning assigned by Section 242.301, Health and Safety Code.

(b) The commission by rule shall require an electric utility to give to the following the same priority that it gives to a hospital in the utility's emergency operations plan for restoring power after an extended power outage:

- (1) a nursing facility;
- (2) an assisted living facility; and
- (3) a facility that provides hospice services.

(c) The rules adopted by the commission under Subsection (b) must allow an electric utility to exercise the electric utility's discretion to prioritize power restoration for a facility after an extended power outage in accordance with the facility's needs and with the characteristics of the geographic area in which power must be restored.

(d) A municipally owned utility shall report the emergency operations plan for restoring power to a facility listed in Subsection (b) to the municipality's governing body or the body vested with the power to manage and operate the municipally owned utility.

(e) An electric cooperative shall report the emergency operations plan for restoring power to a facility listed in Subsection (b) to the board of directors of the electric cooperative.

Added by Acts 2011, 82nd Leg., R.S., Ch. 640 (S.B. 937), Sec. 1, eff. September 1, 2011.

#### Sec. 38.073. AUTHORITY OF COMMISSION DURING AN EMERGENCY.

(a) On a declaration of a natural disaster or other emergency by the governor, the commission may require an electric utility, municipally owned utility, electric cooperative, qualifying facility, power generation company, exempt wholesale generator, or power marketer to sell electricity to an electric utility, municipally owned utility, or electric cooperative that is unable to supply power to meet customer demand due to the natural disaster or other emergency. Any plant, property, equipment, or other items

used to receive or deliver electricity under this subsection are used and useful in delivering service to the public, and the commission shall allow timely recovery for the costs of those items. The commission may order an electric utility, municipally owned utility, or electric cooperative to provide interconnection service to another electric utility, municipally owned utility, or electric cooperative to facilitate a sale of electricity under this section. If the commission does not order the sale of electricity during a declared emergency as described by this subsection, the commission shall promptly submit to the legislature a report describing the reasons why the commission did not make that order.

(b) If an entity receives electricity under Subsection (a), the receiving entity shall reimburse the supplying entity for the actual cost of providing the electricity. The entity receiving the electricity is responsible for any transmission and distribution service charges specifically incurred in relation to providing the electricity.

(c) An entity that pays for electricity received under Subsection (b) and that is regulated by the commission may fully recover the cost of the electricity in a timely manner by:

(1) including the cost in the entity's fuel cost under Section 36.203; or

(2) notwithstanding Section 36.201, imposing a different surcharge.

Added by Acts 2009, 81st Leg., R.S., Ch. 1226 (S.B. 1492), Sec. 2, eff. June 19, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 2.02, eff. September 1, 2009.

#### SUBCHAPTER E. INFRASTRUCTURE IMPROVEMENT AND MAINTENANCE REPORT

Sec. 38.101. REPORT ON INFRASTRUCTURE IMPROVEMENT AND MAINTENANCE. (a) Not later than May 1 of each year, each electric utility shall submit to the commission a report describing the utility's activities related to:

(1) identifying areas that are susceptible to damage during severe weather and hardening transmission and distribution

facilities in those areas;

(2) vegetation management; and

(3) inspecting distribution poles.

(b) Each electric utility shall include in a report required under Subsection (a) a summary of the utility's activities related to preparing for emergency operations.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. [1831](#)), Sec. 2.03, eff. September 1, 2009.

Sec. 38.102. REPORTS ON SAFETY PROCESSES AND INSPECTIONS.

(a) Each electric utility, municipally owned utility, and electric cooperative that owns or operates overhead transmission or distribution assets shall submit to the commission a report that includes:

(1) a summary description of hazard recognition training documents provided by the utility or electric cooperative to its employees related to overhead transmission and distribution facilities; and

(2) a summary description of training programs provided to employees by the utility or electric cooperative related to the National Electrical Safety Code for the construction of electric transmission and distribution lines.

(b) An electric utility, municipally owned utility, or electric cooperative shall submit an updated report not later than the 30th day after the date the utility or electric cooperative finalizes a material change to a document or program included in a report submitted under Subsection (a).

(c) Not later than May 1 every five years, each electric utility, municipally owned utility, and electric cooperative that owns or operates overhead transmission facilities greater than 60 kilovolts shall submit to the commission a report for the preceding five-year period ending on December 31 of the preceding calendar year that includes:

(1) the percentage of overhead transmission facilities greater than 60 kilovolts inspected for compliance with the National Electrical Safety Code relating to vertical clearance in the reporting period; and

(2) the percentage of the overhead transmission facilities greater than 60 kilovolts anticipated to be inspected for compliance with the National Electrical Safety Code relating to vertical clearance during the five-year period beginning on January 1 of the year in which the report is submitted.

(d) Subject to Subsection (f), not later than May 1 of each year, each electric utility, municipally owned utility, or electric cooperative that owns or operates overhead transmission facilities greater than 60 kilovolts shall submit to the commission a report on the overhead transmission facilities for the preceding calendar year that includes information regarding:

(1) the number of identified occurrences of noncompliance with Section 38.004 regarding the vertical clearance requirements of the National Electrical Safety Code for overhead transmission facilities;

(2) whether the utility or electric cooperative has actual knowledge that any portion of the utility's or electric cooperative's transmission system is not in compliance with Section 38.004 regarding the vertical clearance requirements of the National Electrical Safety Code; and

(3) whether the utility or electric cooperative has actual knowledge of any violations of easement agreements with the United States Army Corps of Engineers relating to Section 38.004 regarding the vertical clearance requirements of the National Electrical Safety Code for overhead transmission facilities.

(e) Subject to Subsection (f), not later than May 1 of each year, each electric utility, municipally owned utility, or electric cooperative that owns or operates overhead transmission facilities greater than 60 kilovolts or distribution facilities greater than 1 kilovolt shall submit to the commission a report for the preceding calendar year that includes:

(1) the number of fatalities or injuries of individuals other than employees, contractors, or other persons qualified to work in proximity to overhead high voltage lines involving transmission or distribution assets related to noncompliance with the requirements of Section 38.004; and

(2) a description of corrective actions taken or

planned to prevent the reoccurrence of fatalities or injuries described by Subdivision (1).

(f) Violations resulting from, and incidents, fatalities, or injuries attributable to a violation resulting from, a natural disaster, weather event, or man-made act or force outside of a utility's or electric cooperative's control are not required to be included in the portions of the reports required under Subsections (d) and (e).

(g) Not later than September 1, each year the commission shall make the reports publicly available on the commission's Internet website.

(h) A report, and any required information contained in a report, made on an incident or violation under this section is not admissible in a civil or criminal proceeding against the electric utility, municipally owned utility, or electric cooperative, or the utility's or electric cooperative's employees, directors, or officers. The commission may otherwise take enforcement actions under the commission's authority.

Added by Acts 2019, 86th Leg., R.S., Ch. 1320 (H.B. [4150](#)), Sec. 5, eff. September 1, 2019.